

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NANCY DeSAINT and BARBARA KEENAN,
on behalf of themselves and others similarly
situated,

Plaintiffs,

v.

DELTA AIR LINES, INC.

Defendants.

CIVIL ACTION NO. 13-11856

**DEFENDANT DELTA AIR LINES, INC.'S RULE 56.1 STATEMENT OF UNDISPUTED
MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules for the United States District Court for the District of Massachusetts, the Defendant, Delta Air Lines ("Defendant" or "Delta"), by and through its undersigned counsel, hereby submits this Rule 56.1 Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment:¹

BACKGROUND

1. Delta provides scheduled air transportation for passengers and cargo throughout the United States and around the world. Killeen Aff. Ex. 4 at p. 2.
2. Delta's route network is centered on a system of hub and international gateway airports that Delta operates in 11 domestic and international locations. Killeen Aff. Ex. 4 at p. 2.
3. As of December 31, 2013, Delta employed approximately 78,000 employees worldwide. Killeen Aff. Ex. 4 at p. 10.
4. As of December 31, 2013, Delta employed approximately 19,900 Flight Attendants in the United States. Declaration of Brian Moreau ("Moreau Decl.") ¶ 2, attached to Killeen Aff. as Ex. 5.
5. Delta's Flight Attendants are primarily based at one of Delta's eight domestic hubs, including its operations at Logan International Airport in Boston, Massachusetts. Moreau Decl. ¶ 3.

¹ Cited portions of the deposition transcripts of Plaintiff Nancy DeSaint ("DeSaint Dep."), Plaintiff Barbara Keenan ("Keenan Dep.") and Brian Moreau ("Moreau Dep.") are attached to the Affidavit of Brendan T. Killeen ("Killeen Aff." as exhibits ("Exs.") 1, 2 and 3, respectively.

6. Plaintiff Nancy DeSaint (“DeSaint”) is currently a Flight Attendant for Defendant, a position she has held for 29 years. Plaintiffs’ First Amended Class Complaint (“Compl.”) ¶ 2; DeSaint Dep. 14:2-4.
7. Plaintiff Barbara Keenan (“Keenan”) was a Flight Attendant for Defendant for 44 years before retiring in June 2012. Compl. ¶ 3; Keenan Dep. 6:21-7:5.
8. As of 2010, DeSaint and Keenan each had a length of service with Delta exceeding 12 years. Compl. ¶¶ 2-3; DeSaint Dep. 14:2-4; Keenan Dep. 6:21-7:5.
9. During certain periods of their employment, Plaintiffs were employed as Flight Attendants based out of Logan Airport in Boston, Massachusetts. Compl. ¶¶ 2, 3.
10. DeSaint was on special assignment from May 2013 through August 2013. Moreau Decl. ¶ 19.
11. While on special assignment, DeSaint served as a Flight Attendant on one flight and was compensated in accordance with the Flight Attendant Work Rules for that flight. DeSaint Dep. 20:12-18.
12. For the remaining portion of DeSaint’s special assignment, DeSaint was compensated at an hourly rate that was set at the time she accepted the special assignment. DeSaint Dep. 19:19-20:4.
13. DeSaint last served as a Flight Attendant on a charter plane in the fall of 2011. DeSaint Dep. 13:10-12.

FLIGHT ATTENDANTS

14. Delta’s Flight Attendants work a fluctuating schedule that is dependent on the flights within Delta’s route network to which they are assigned. Moreau Decl. ¶ 4.
15. Flight Attendants begin their Rotation by reporting to the airport at a designated time for “Sign-In,” which also lets Delta know that the Flight Attendants are present to work the assigned Rotation. Moreau Decl. ¶ 5.
16. The Report Time is the time Flight Attendants must be present at the airport for Sign-In or from a Layover. Killeen Aff. Ex. 6 at D000231.
17. After reporting, Flight Attendants attend a pre-flight meeting with the other Flight Attendants and pilots working the flight. Moreau Decl. ¶ 6.
18. After the meeting, the Flight Attendants proceed to the aircraft to perform a number of duties to ensure the aircraft cabin is ready to receive passengers before the Flight Attendants assist with the boarding process. Moreau Decl. ¶ 7.
19. After the plane pushes back from the gate, the Flight Attendants perform the necessary safety demonstrations and other duties typically associated with Flight Attendants for the duration of the flight. Moreau Decl. ¶ 8.

20. Upon arrival at the destination, the Flight Attendants assist with the deplaning process once the boarding door has opened. Moreau Decl. ¶ 9.
21. At the conclusion of a Duty Period, Flight Attendants have no more duties attached to the flight. Moreau Dep. 29:6-7.
22. If the end of a Duty Period is in the middle of a Rotation, Flight Attendants are released into Layover rest. Moreau Dep. 29:7-9.
23. During a Layover, Flight Attendants may sleep, eat, shop, sightsee, and engage in other personal activities. Moreau Decl. ¶ 18.
24. If the Flight Attendant has another flight segment within the existing Duty Period following arrival at a destination city, the Flight Attendant may rest or engage in personal pursuits until the Report Time for the next flight. Moreau Decl. ¶ 10.
25. If the Duty Period is the last Duty Period within a Rotation, Flight Attendants are released for home base rest. Moreau Dep. 29:9-11.

FLIGHT ATTENDANT SCHEDULING

26. Flight Attendants bid for and are assigned a flight schedule for every month. Moreau Dep. 14:11-14.
27. Flight Attendants are provided access to a monthly bid packet for their base that contains information on all available Rotations that Flight Attendants may bid on for their schedule the following month. DeSaint Dep. 28:15-20; Keenan Dep. 26:22-27:2; Moreau Dep 14:11-14; Killeen Aff. Ex. 7.
28. A Rotation covers the period from when a Flight Attendant first reports to base through their release from the final Duty Period. Moreau Dep. 22:3-6, 22:13-22.
29. A Rotation can include multiple Duty Periods. DeSaint Dep. 38:11-14; Keenan Dep. 25:23-26:1; Moreau Dep. 22:3-6; 22:13-22; Killeen Aff. Ex. 6 at D000230; 232.
30. A Rotation can span more than one day. Moreau Dep. 22:3-22, 34:8-10.
31. A Duty Period is the period of time covering the time a Flight Attendant reports to base until the time they are released from duty for that period. DeSaint Dep. 8:17-20, 9:9-12, 38:5-10; Keenan Dep. 23:21-14:3; Moreau Dep. 26:3-21.
32. A Duty Period can include more than one flight. Moreau Dep. 34:5-7.
33. A Duty Period can span more than one day. Moreau Dep. 34:8-10.
34. There is a 14 hour maximum for a domestic Duty Period and a 16 hour maximum for an international Duty Period. Moreau Dep. 34:14-16.
35. The pre-flight meeting takes place during the Duty Period. DeSaint Dep. 38:5-10.

36. Boarding of the plane takes place during the Duty Period. DeSaint Dep. 9:5-8, 38:15-18; Keenan Dep. 35:11-14; Moreau Dep. 26:12-13; 33:14-15.
37. “Block Out” refers to when a plane pushes back from the gate. Moreau Dep. 23:14-18.
38. “Block In” refers to the time at the end of a flight when the plane pulls into the gate. Moreau Dep. 23:14-18; Killeen Aff. Ex. 6 at D000221.
39. Deplaning of the plane takes place during the Duty Period. DeSaint Dep. 9:13-16.
40. The Duty Period includes an extra 15 minutes to the release time to account for deplaning. DeSaint Dep. 8:21-9:2; Keenan Dep. 32:14-20; Moreau Dep. 26:13-18, 29:17-20.
41. If a Flight Attendant’s release occurs more than 15 minutes after blocking in, Flight Attendants can call the scheduling unit to adjust the release time accordingly; the adjustment is then applied to each Flight Attendant who worked the flight. Moreau Dep. 29:19-22, 30:5-14; Killeen Aff. Ex. 6 at D000055.
42. For each Rotation, the bid packet provides: (1) the Report Time; (2) Flight Time for each individual flight and Duty Period; (3) Credit Time, if any; (4) total value of the Duty Period, which combines the Flight Time and Credit Time; (5) Duty Period length; (6) deadhead leg, if any; and (7) total value of the trip, total Flight Time, total credit and total time away from base. DeSaint Dep. 45:17-20, 46:2-23; Keenan Dep. 28:23-29:11; Killeen Aff. Ex. 7 at 9.
43. Using the bid packet, Flight Attendants bid for the Rotations they want and are provided a monthly schedule. Moreau Dep. 14:11-14.
44. After their initial schedule is set, Flight Attendants may adjust it, including by swapping their Rotations with other Flight Attendants. DeSaint Dep. 48:9-17; Moreau Dep. 39:21-40:5.
45. Delta does not know whether a Flight Attendant has worked his or her scheduled flights until the flights are complete. DeSaint Dep. 49:11-15; Moreau Dep. 14:11-22; 41:13-22.
46. The bid packet provides Flight Attendants with the expected number of credits that Rotation would generate for compensation purposes. DeSaint Dep. 28:21-29:3.
47. The bid packet allows Flight Attendants to determine the projected compensation under each formula. DeSaint Dep. 29:3-9, 47:18-23; Keenan Dep. 28:23-29:11, 31:16-32:2.
48. Flight Attendants are never credited a lower amount than what is listed in the bid packet. DeSaint Dep. 47:15-17; Keenan Dep. 32:3-13.

THE FLIGHT ATTENDANT WORK RULES

49. Delta Flight Attendants are provided Delta’s Flight Attendant Work Rules (the “Work Rules”). Moreau Dep. 17:6-11.
50. Delta Flight Attendants are provided the Work Rules upon graduation from training. Moreau Dep. 17:14-15.

51. Delta Flight Attendants can access the Work Rules using Delta's internal internet site. Moreau Dep. 17:14-24.
52. Plaintiffs always had access to the Work Rules. DeSaint Dep. 15:3-11, 35:2-4; Keenan Dep. 17:11-21.
53. Plaintiffs read the Work Rules. DeSaint Dep. 15:12-13; Keenan Dep. 20:4-14.
54. DeSaint read the Work Rules in the past five years. DeSaint 15:17-19.
55. Keenan had access to the Work Rules in the past five years. Keenan Dep. 20:4-14.
56. Delta notifies Flight Attendants when the Work Rules are amended. DeSaint Dep. 33:7-9.
57. When Delta revises the Work Rules, it identifies the sections that have been amended and updates the date on the top of each of the amended pages so that Flight Attendants know when those pages were last amended. DeSaint Dep. 33:10-22.
58. The Work Rules contain all of the rules, policies and scheduling procedures for Delta Flight Attendants, including the policies regarding Flight Attendant compensation. Killeen Aff. Ex. 6 at D000008, D000046.

FLIGHT ATTENDANT COMPENSATION STRUCTURE

59. Flight Attendant compensation is paid as an hourly rate for all hours flown or credited. Moreau Dep. 20:22-23; Killeen Aff. Ex. 6 at D000046.
60. All Delta Flight Attendants are compensated in accordance with the Work Rules. Moreau Dep. 14:14-18.
61. Plaintiffs were compensated in accordance with the Work Rules. DeSaint Dep. 20:16-18.
62. The airline industry typically applies a base rate when calculating Flight Attendant compensation, which Delta defines as Flight Pay Rate. Moreau Decl. ¶ 11.
63. Each Flight Attendant is assigned a Flight Pay Rate based upon their length of service. Moreau Decl. ¶ 12.
64. As of January 1, 2010, Flight Attendants with length of service 12 years and above were assigned a Flight Pay Rate of \$43.57. Moreau Decl. ¶ 13.
65. As of October 1, 2010, Flight Attendants with length of service 12 years and above were assigned a Flight Pay Rate of \$45.75. Moreau Decl. ¶ 14.
66. As of July 1, 2012, Flight Attendants with length of service 12 years and above were assigned a Flight Pay Rate of \$47.58. Moreau Decl. ¶ 15.
67. As of January 1, 2013, Flight Attendants with length of service 12 years and above were assigned a Flight Pay Rate of \$49.96. Killeen Aff. Ex. 6 at D000049.

68. As of January 1, 2014, Flight Attendants with length of service 12 years and above were assigned a Flight Pay Rate of \$49.96. Killeen Aff. Ex. 8 at D000790.

69. Flight Attendants are compensated on a per Rotation basis with each Rotation paying the greatest amount generated by the four calculations set forth in the Work Rules: (1) Flight Pay; (2) Duty Period Credit; (3) Duty Period Average; and (4) Trip Credit. DeSaint Dep. 22:10-15; Keenan Dep. 11:9-10, 21:11-20, 22:16-19, 26:2-8; Moreau Dep. 21:13-16, 27:11-16.

70. For every trip, Delta calculates the flight hours as well as the total number of credits a Flight Attendant would receive under each formula, multiplies it by the Flight Attendant's Flight Pay Rate, compares the sum, and pays the greatest total value. Moreau Dep. 21:5-12; Killeen Aff. Ex. 6 at D000046, D000050.

71. Plaintiffs understood that there were different calculations used to determine compensation. DeSaint Dep. 22:6-15; Keenan Dep. 13:13-20.

72. Flight Attendants are compensated for a charter flight in the same manner in which they are compensated for any other flight. Moreau Dep. 56:13-22; Killeen Aff. Ex. 6 at D000090.

DUTY PERIOD CREDIT FORMULA

73. The Duty Period Credit applies one hour of Flight Pay Rate for every two hours a Flight Attendant is on duty for any given Duty Period. Keenan Dep. 14:8-15; Moreau Dep. 42:8-15; Killeen Aff. Ex. 6 at D000050.

74. When using the Duty Period Credit calculation, a Flight Attendant is paid half of his or her Flight Pay Rate for each hour on duty. Keenan Dep. 14:8-15.

75. In 2013, \$24.98 was the amount paid per hour to DeSaint for each hour on duty in 2012. DeSaint Dep. 43:8-12; Keenan Dep. 14:8-15.

DUTY PERIOD AVERAGE FORMULA

76. The Duty Period Average formula is intended to provide Flight Attendants whose Rotation consists of relatively short flight segments within multiple duty periods with higher compensation than they would receive under the remaining formulas. Moreau Decl. ¶ 16.

77. For every Duty Period within a Rotation, a credit is applied of four hours and 45 minutes. Moreau Dep., 31:18-20; Killeen Aff. Ex. 6 at D000051.

78. The number of Duty Periods within the Rotation are then added together to determine the total number of credits for that Rotation and then multiplied by the Flight Pay Rate. Moreau Dep. 31:18-20, 31:18-24; Killeen Aff. Ex. 6 at D000051.

FLIGHT PAY FORMULA

79. Flight Time begins at the time the aircraft Blocks Out from the gate at one location and ends when the aircraft Blocks In the gate at its next location. Moreau Dep. 23:14-18; Killeen Aff. Ex. 6 at D000046, D000049.

80. The Flight Pay formula is designed to provide for higher compensation to Flight Attendants for Rotations where there is a relatively high percentage of Flight Time. Moreau Decl. ¶ 17.

81. Under the Flight Pay formula, Flight Attendants receive their hourly flight pay rate for the scheduled or actual Flight Time for each flight, whichever is greater. Keenan Dep. 22:20-23:4; Moreau Dep. 23:23-24:3, 45:24-46:1-4.

82. Flight pay includes Deadhead flight pay. Keenan Dep. 22:2-5; Killeen Aff. Ex. 6 at D000046.

83. Deadheading is when a Flight Attendant is flying in a paid capacity from one location to another while sitting in a passenger seat as opposed to working with the flight crew. Moreau Dep. 23:1-6.

84. Flight Attendants receive full pay and full credit for any Deadhead flights. Killeen Aff. Ex. 6 at D000052.

TRIP PAY CREDIT FORMULA

85. For every Rotation, Delta calculates the Flight Attendant's "Time Away From Base," which is the total number of hours between a Flight Attendant's initial report at the beginning of a Rotation to the Flight Attendant's final release at the end of the Rotation. DeSaint Dep. 36:4-13; Keenan Dep. 23:11-18, 24:15-25:1; Moreau Dep. 37:19-38:1; Killeen Aff. Ex. 6 at D000051.

86. Time Away From Base includes the time that a Flight Attendant is not on duty during the Rotation. Moreau Decl. ¶ 18.

87. Under the Trip Pay Credit calculation, the Flight Attendant is credited with one hour of Flight Pay Rate for every three and a half hours spent away from base during the Rotation. DeSaint Dep. 36:4-13; Keenan Dep. 23:11-18, 24:15-25:1; Moreau Dep. 37:19-38:1.

PREMIUM PAY

88. Flight Attendants may receive premium pay, such as purser or flight leader pay, report pay, standby pay, holding pay, international pay, and other such additional payments as part of their compensation that is paid in addition to the flight credit-based compensation received for each Rotation. Moreau Dep. 41:19-22; 44:12-21; 49:21-50:3; 51:21-52:4; 52:11-18; 56:1-6; 67:7-10.

89. When a flight is delayed or "held" at the gate for more than an hour, Flight Attendants receive a premium called Holding Pay. Moreau Dep. 49:21-50:3; Killeen Aff. Ex. 6 at D000056.

90. Flight Attendants receive holding pay for charter flights. Moreau Dep. 56:23-57:2.

91. If a flight is held on the ground after it has blocked out, that time is incorporated into the Flight Pay and Duty Period calculations and treated as a credit. Moreau Dep. 51:21-52:4, 52:11-18.

92. Flight Attendants may also be assigned a “Standby” assignment, which requires them to report to an airport and await potential assignment to a flight or assist with boarding and preparing a flight for departure. Killeen Aff. Ex. 6 at D000233.

93. Flight Attendants are credited one hour for every two hours of standby time unless they would receive greater compensation under any of the formulas for duties performed during that standby period. Moreau Dep. 56:1-6.

94. When Flight Attendants report for a Rotation, but do not fly, they are paid \$10.80 or under the Duty Period Credit, whichever is greater. Killeen Aff. Ex. 6 at D000053.

95. International pay is considered a premium pay separate from the trip credit. Moreau Dep. 67:7-10.

96. Flight attendants are paid a per diem for meals or other expenses while they are on a trip. Moreau Dep. 45:6-8.

THE PAY DESK

97. When Flight Attendants have questions on pay-related issues they can call what is referred to as the Pay Desk. DeSaint Dep. 29:17-23, 30:6-18.

98. DeSaint would advise Flight Attendants to contact the Pay Desk when they had questions regarding their compensation. DeSaint Dep. 30:7-8; 30:11-18.

FLIGHT ATTENDANT ROLES

99. A Flight Leader is the lead Flight Attendant on a domestic flight. Killeen Aff. Ex. 6 at D000225.

100. A Purser is the lead Flight Attendant on a transoceanic flight. Killeen Aff. Ex. 6 at D000231.

Dated: May 9, 2014

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was filed through the ECF system on May 9, 2014
and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Lisa Stephanian Burton

Lisa Stephanian Burton